LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 21 1966
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 862

ANNA KNOLL and ROSE KELLER,
Petitioners,

vs.

ALEX KNOLL, JOSEPHINE KNOLL, JOE KNOLL, ADAM KNOLL, WENDELIN KNOLL, MARY BITTEL, ADOLPH KNOLL, STEPHANIE KNOLL, MARGARET SLUGA, CASEY JONES, and MOBIL OIL COMPANY,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

ROBERT MARTIN,
1400 Wichita Plaza,
Wichita, Kansas,

GEORGE B. COLLINS,
KENNETH W. PRINGLE, JR.,
W. F. SCHELL,
ROBERT M. COLLINS,
WILLIAM L. OLIVER, JR.,
WILLIAM V. CRANK,
TOM C. TRIPLETT,
Wichita, Kansas,

THOMAS M. BURNS,
PETER J. WALL,
Denver, Colorado,
Attorneys for Respondents.

R. L. Stinnett, Inc., 920 Cherry Street, Kansas City, Mo. 64106, HArrison 1-5200

INDEX

Opinions of the Courts Below	1
Jurisdiction	2
Questions Presented	2
Constitutional Questions Involved	2
Statement	3
Argument	4
Conclusion	4

CASE CITED

Strawbridge v. *Curtiss*, 3 Cranch 267, 2 L. Ed. 435 (1806)	4

IN THE

SUPREME COURT OF THE UNITED STATES

No. 862

ANNA KNOLL and ROSE KELLER,
Petitioners,

vs.

ALEX KNOLL, JOSEPHINE KNOLL, JOE KNOLL, ADAM KNOLL, WENDELIN KNOLL, MARY BITTEL, ADOLPH KNOLL, STEPHANIE KNOLL, MARGARET SLUGA, CASEY JONES, and MOBIL OIL COMPANY,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

OPINIONS OF THE COURTS BELOW

Memorandum opinion of Judge Wesley E. Brown of the United States District Court for the District of Kansas, dated December 10, 1964; Per Curiam opinion of the United States Court of Appeals for the Tenth Circuit, 350 F.2d 407 (1965).

JURISDICTION

Petitioners state the jurisdiction of this Court is provided by 28 U.S.C. 1254. This statute does not make it mandatory that a review by writ of certiorari be granted as a matter of right, but makes it one of sound judicial dis-

cretion. Before a writ of certiorari shall be granted there must be important reasons therefor, such as a conflict of decisions in the Court of Appeals, a decision on an important question which departs from the decision of the Supreme Court, or a departure from the accepted course of judicial proceedings to an extent that it is necessary to exercise the supervisory powers of the Court. U.S. Sup. Ct. R. 19. Since none of the situations, or a similar situation, exist as to the present case, this Court should exercise its discretion by dismissing the petitioners' writ of certiorari.

The Court should be informed that there is presently pending in the United States District Court for the District of Kansas, cases numbered W-3361, W-3362, and W-3363, consisting of interpleader actions brought by Socony Mobil, a respondent here, naming the petitioners and the remaining respondents as defendants. These actions involve the same substantive facts and issues as the present case. Therefore, the issue before this Court is moot in that the same court which originally dismissed petitioners' complaint for lack of jurisdiction, now has jurisdiction to adjudicate all of the claims petitioners alleged in the first action.

QUESTIONS PRESENTED

The sole issue before this Court is whether the Court of Appeals properly affirmed the dismissal by the District Court of the petitioners' complaint for lack of jurisdiction.

CONSTITUTIONAL QUESTIONS INVOLVED

Contrary to petitioners' assertions, there are no constitutional questions in this case.

STATEMENT

The substantive facts of this case are lengthy and complex. In a previous action based upon the same facts, brought by petitioners in the United States District Court for the District of Kansas, being Civil Action No. W-1811, styled Rose Keller, Anna Knoll and Margaret Sluga v. Alex Knoll, the petitioners dismissed their complaint with prejudice as a result of a settlement agreement. In spite of the complexity of the substantive facts, the jurisdictional facts are simple and clear and the only facts that are relevant to this petition.

On July 21, 1964, petitioners Anna Knoll and Rose Keller instituted the present action. Jurisdiction, as stated in their complaint, was based upon diversity of citizenship. The defendants named in this action were Alex Knoll, Josephine Knoll, Joe Knoll, Adam Knoll, Wendelin Knoll, Mary Bittel, Adolph Knoll, Stephanie Knoll, Margaret Sluga, Casey Jones and Mobil Oil Company. The complaint alleged that the petitioner Rose Keller was a citizen of Illinois, and that the defendants Adolph Knoll, Stephanie Knoll and Margaret Sluga were also citizens of Illinois. The relief prayed for was an adjudication that petitioners were owners of an undivided 1/9th interest in a half section of land in Graham County, Kansas, and the oil produced from said land. Respondents moved to dismiss the complaint for lack of jurisdiction, improper venue, and because the action was barred under Rule 60(b) of the Federal Rules of Civil Procedure. The District Court sustained the motion on the ground that it lacked jurisdiction in that a plaintiff and three defendants were all citizens of Illinois. In addition, the Court held that all the parties were indispensable and could not be dismissed or realigned to cure the jurisdictional defects, although this was never urged by the petitioners. The decision was

affirmed by the United States Court of Appeals for the Tenth Circuit.

ARGUMENT

The single issue before the Court of Appeals was dismissal of petitioners' complaint on the ground that the United States District Court for the District of Kansas lacked jurisdiction. As stated before, petitioners' complaint based jurisdiction on the diversity of citizenship of the parties, but at the same time alleged, truthfully, that the petitioner Rose Keller and respondents Adolph Knoll, Stephanie Knoll and Margaret Sluga were citizens of the same state. If the District Court had found jurisdiction based on these facts, it would clearly be in conflict with the decision of this Court in the case of *Strawbridge v. Curtiss*, 3 Cranch 267, 2 L. Ed. 435 (1806). We submit that dismissal of this case was mandatory.

CONCLUSION

Respondents pray that this Court deny petitioners' petition for writ of certiorari for the reasons set out above.

Respectfully submitted,

ROBERT MARTIN,
1400 Wichita Plaza,
Wichita, Kansas,

GEORGE B. COLLINS,
KENNETH W. PRINGLE, JR.,
W. F. SCHELL,
ROBERT M. COLLINS,
WILLIAM L. OLIVER, JR.,
WILLIAM V. CRANK,
TOM C. TRIPLETT,
Wichita, Kansas,

THOMAS M. BURNS,
PETER J. WALL,
Denver, Colorado,
Attorneys for Respondents.